

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROGER A. LEISHMAN,

9 Plaintiff,

10 v.

CASE NO. 2:20-cv-861

ORDER DENYING MOTION FOR  
RECONSIDERATION

11 WASHINGTON ATTORNEY  
12 GENERAL'S OFFICE; SHANE  
13 ESQUIBEL; ELIZABETH CHRISTINA  
14 BEUSCH; ALLYSON JANAY  
15 FERGUSON; KARI HANSON;  
16 SUZANNE LIABRAATEN; VALERIE  
17 PETRIE; KATHRYN NADINE  
REYNOLDS; WESTERN  
WASHINGTON UNIVERSITY; BRUCE  
SHEPARD; and OFFICE OF THE  
GOVERNOR,  
Defendants.

18 Plaintiff Roger Leishman moves for reconsideration of the Court's order  
19 granting the State Defendants' motion to dismiss. Dkt. No. 194. Specifically,  
20 Leishman requests that the Court "(1) reconsider its Rule 12(b)(6) untimeliness  
21 ruling; (2) deny the State Defendants' motion to dismiss Leishman's WLAD claims  
22 against them (Third Claim and Eighth Claim); and (3) grant Leishman's separate  
23 motion to file his proposed amended complaint." Dkt. No. 197 at 10. Having

1 thoroughly considered Leishman's request and the relevant record, the Court  
2 DENIES Leishman's motion for the reasons explained below.

3 "Motions for reconsideration are disfavored" and will usually be denied unless  
4 there's a showing of "manifest error in the prior ruling" or "new facts or legal  
5 authority which could not have been brought to [the Court's] attention earlier with  
6 reasonable diligence." LCR 7(h)(1). Thus, a motion for reconsideration "may *not* be  
7 used to raise arguments or present evidence for the first time when they could  
8 reasonably have been raised earlier in the litigation." *Kona Enter., Inc. v. Est. of*  
9 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (emphasis in original). Whether to grant  
10 reconsideration is left to the court's discretion, *Navajo Nation v. Confederated*  
11 *Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003),  
12 but reconsideration is an "extraordinary remedy, to be used sparingly in the  
13 interests of finality and conservation of judicial resources." *Kona Enter., Inc.*, 229  
14 F.3d at 890 (internal citation omitted).

15 Leishman argues that the Court erred in dismissing his Washington Law  
16 Against Discrimination (WLAD) claims in his *Third* Amended Complaint because  
17 Judge Jones's prior rulings about the timeliness of claims stated in Leishman's *First*  
18 Amended Complaint are the law of the case. Leishman misapprehends the law of  
19 the case doctrine, as he erroneously believes it cabins the Court's ability to rule  
20 under these circumstances.

21 The Ninth Circuit describes the law of the case doctrine thusly:

22 Under the "law of the case" doctrine, a court is generally precluded from  
23 reconsidering an issue that has already been decided by the same court,  
or a higher court in the identical case. The doctrine is not a limitation

1 on a tribunal's power, but rather a guide to discretion. A court may have  
2 discretion to depart from the law of the case where: 1) the first decision  
3 was clearly erroneous; 2) an intervening change in the law has occurred;  
4 3) the evidence on remand is substantially different; 4) *other changed*  
5 *circumstances exist*; or 5) a manifest injustice would otherwise result.

6 *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (internal citations  
7 omitted) (emphasis added).

8 A change in circumstances warranted a departure from Judge Jones's  
9 previous ruling. Namely, after Judge Jones issued his order granting in part and  
10 denying in part the State Defendants' motion to dismiss Leishman's First Amended  
11 Complaint, Leishman filed an amended complaint instead of prosecuting his  
12 surviving claims. An "amended complaint supersedes the original, the latter being  
13 treated thereafter as non-existent." *Ramirez v. Cnty. of San Bernardino*, 806 F.3d  
14 1002, 1008 (9th Cir. 2015) (internal citation omitted).

15 "[T]he filing of an amended complaint does not ask the court to reconsider its  
16 analysis of the initial complaint." *Askins v. U.S. Dep't of Homeland Sec.*, 899 F.3d  
17 1035, 1043 (9th Cir. 2018). "The district court may decide the second motion to  
18 dismiss in the same way it decided the first, but permitting the filing of an amended  
19 complaint requires a new determination. That leaves the district court free to  
20 correct any errors or misunderstandings without having to find that its prior  
21 decision was 'clearly erroneous.'" *Id.* (quoting *United States v. Cuddy*, 147 F.3d  
22 1111, 1114 (9th Cir. 1998)); *see also O'Connor v. Uber Techs., Inc.*, 58 F. Supp. 3d  
23 989, 995–96 (N.D. Cal. 2014) ("[A] number of courts have permitted defendants  
to move to challenge the *entire* amended complaint — including those causes of

1 action the court had previously found sufficient.”). Consequently, the law of the case  
2 doctrine does not apply here.

3 Because Leishman fails to show why the Court should reverse or modify its  
4 previous ruling his motion for reconsideration is DENIED.

5 Finally, Leishman requests that the Court grant his separate motion to file  
6 another amended complaint. Whether to grant Leishman leave to file an amended  
7 complaint, however, is a separate matter that the Court will not rule on in the  
8 context of denying this motion.

9 Dated this 22nd day of December, 2023.

10 

11 \_\_\_\_\_  
Jamal N. Whitehead  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23